

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NOV 23 PM 1:43

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

GEORGIE BOY MANUFACTURING, INC.)

Defendant.)

File No. 1:99CV772

CONSENT DECREE

Plaintiff, the United States of America, by authority of the Attorney General of the United States, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action seeking civil penalties pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413, against the Defendant, Georgie Boy Manufacturing, Inc. ("Georgie Boy"). The Complaint alleges that Georgie Boy, a subsidiary of Coachmen Industries, Inc., which manufactures Class A and Class C recreational vehicles in Edwardsburg, Michigan, failed to comply with the Michigan State Implementation Plan ("SIP") by: failing to obtain construction and operating permits as required by the Michigan SIP and the Act; failing to install control technology capable of achieving the lowest achievable emission rate ("LAER"); and failing to obtain an emission reduction "offset" for each major nonattainment air contaminant source. 42 U.S.C. § 7410(a); Michigan Air Pollution Control Commission ("MAPCC") Rule 201, Rule 208 and Rule 220, *et seq.*

The United States and Georgie Boy agree that settlement of this action is in the

public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter.

THEREFORE, it is hereby AGREED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. The Court has personal jurisdiction over Georgie Boy and venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding.

3. The Complaint states a claim upon which relief can be granted under Section 113 of the Act, 42 U.S.C. § 7413.

4. Solely for the purposes of this Consent Decree, and without an admission of liability for the claims asserted by the United States herein, Georgie Boy waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. DEFINITIONS

5. Unless specifically defined in this section or elsewhere in this Consent Decree, terms used herein shall have the meanings set forth in Section 302 of the Clean Air Act, 42 U.S.C. § 7602, or any regulations promulgated under the Act.

6. "Act" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*

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7. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

8. "Decree" means this Consent Decree, as entered by the Court.

9. "Edwardsburg Facility" shall mean the Class A and Class C recreational vehicle production plant located at 69950 M-62, Edwardsburg, Michigan, currently owned and operated by Georgie Boy Manufacturing, Inc.

10. "EPA" means the United States Environmental Protection Agency.

11. "Georgie Boy" or "Georgie Boy Manufacturing" or "Defendant" shall mean Georgie Boy Manufacturing, Inc.

12. "MDEQ" means the Michigan Department of Environmental Quality, formerly known as the Michigan Department of Natural Resources.

13. "Notify," "submit," and other terms signifying an obligation to transmit or communicate documents and information means to deliver by personal delivery, by courier, or by mail for delivery not later than the day that such transmission or communication is required by this Consent Decree.

14. "Parties" means the United States and Georgie Boy.

III. PARTIES BOUND

15. The provisions of this Consent Decree shall apply to and be binding on the United States and Georgie Boy, and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter Georgie Boy's status or responsibilities under this Consent

Decree.

IV. CIVIL PENALTIES

16. Within thirty (30) calendar days after entry of this Consent Decree as an Order of the Court, Georgie Boy shall pay a civil penalty in the sum of \$99,000 to the United States in full satisfaction and settlement of any and all civil claims for violations alleged in the Complaint relating to the Edwardsburg Facility, and occurring prior to the date of lodging of this Consent Decree. The penalty specified herein shall represent civil penalties assessed by the United States and shall not be deductible for purposes of federal taxes. Payment shall be made to the United States by Fedwire Electronic Funds Transfer ("EFT") to the Federal Reserve/U.S. Treasury Department in New York City for credit to the U.S. Department of Justice. Any EFTs received at the Federal Reserve Bank prior to its time of closing will be credited that business day.

The following information must be provided to the bank making the Electronic Transfer of Funds:

Receiving Bank ABA Code	021030004
Message Type Code	1000
Amount to be Transferred	\$99,000.00
Receiving Beneficiary Bank, Name, and Account Number DEPT OF JUSTICE/AC- 15030001	TREASNYC/CTR/BNF=
Collection Office Identifier	U. S. Attorney, MIW
Debtor's Name Collection Office Claim Number	9300829

On the date of payment, written notice of payment must be sent by telefax to the U.S. Attorney's Office for the Western District of Michigan, Collections Unit, Attention: Lois Hecker at (616) 456-2510.

Georgie Boy shall transmit evidence of such payment to the United States and EPA at the following addresses:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044
Re: DOJ 90-5-2-1-1954

Jennifer Darrow
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency - Region V
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604

V. FAILURE TO MAKE TIMELY PAYMENTS

17. If the civil penalty provided for in this Consent Decree is not timely paid, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amounts in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States shall be entitled to interest on any overdue amount from the due date at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Further, Georgie Boy shall be liable for reasonable attorney fees and costs incurred by the United States to collect any amounts past due under this Consent Decree.

18. Payments made under Paragraph 17 shall be in addition to any other remedies or sanctions available to the United States or EPA by virtue of Georgie Boy's failure to make timely payments required by this Consent Decree.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Georgie Boy manufactures Class A and Class C recreational vehicles. Adhesives and paints used in the manufacture of these products are volatile organic chemical ("VOC") based. (See ¶ 23 of the Complaint). Through the execution of this Consent Decree, Georgie Boy certifies that it will significantly improve its control of particulate emissions from welding processes, by implementing a supplemental environmental project ("SEP"). Georgie Boy uses "stick" welding in its manufacturing process. This process is only 40% efficient. Georgie Boy will change to MIG ("wire") welding and Georgie Boy expects, that the process will become approximately 95% efficient. Georgie Boy certifies that this improvement in processes will lessen the amount of toxic metals in the ambient air at and around the facility. These metals include cadmium, mercury, arsenic and chromium. Georgie Boy certifies that the MIG welding process complies with OSHA limits and it is not required by law at this facility. Particulate emissions created by the "stick", or "arc" welding process are uncontrolled. Georgie Boy expects, that the use of the new MIG welding is expected to reduce particulate generation from welding by more than 96 percent and agrees to exercise all best efforts to obtain this reduction through the MIG welding process. The change in processes will also reduce electricity usage and demand. The cost of this project will be at least \$54,655.42. Georgie Boy will begin to implement the conversion to new MIG welding processes as soon as this Consent Decree becomes effective and the new MIG welding processes shall be operational by no later than 30

days after entry of this Consent Decree. The MIG welding processes will be used in the Weld Shop at the Georgie Boy, Edwardsburg facility, where previously "stick" welding was in use. At least 14 MIG units will be purchased and promptly installed so as to be operational within 30 days of entry of this Consent Decree.

20. Georgie Boy shall continue to operate the SEP at the Edwardsburg facility for at least 2 years after the entry of this CD in accordance with the attached description.

21. Georgie Boy represents that, as of the date immediately prior to the issuance of this decree, to the best of its knowledge, it was not otherwise required, by virtue of any local, state, or federal statute, regulation, order, or decree, or other law, to operate and maintain a MIG welder at the Edwardsburg Facility. Georgie Boy further represents that it has not already received, and is not currently negotiating with any other person or governmental authority to receive credit or compensation as a SEP for the installation and operation of the MIG welder, and shall not hereafter apply for any such credit.

22. On each occasion that Georgie Boy fails to comply with the requirements to implement the SEP as stated in Paragraphs 19-20, within thirty (30) calendar days of such failure, Georgie Boy shall submit to EPA a report consisting of the date(s), time, duration, and cause for such non-compliance with Paragraphs 20-21. Georgie Boy shall, by its duly authorized officer(s) or duly authorized Environmental Manager of the Edwardsburg Facility, sign and certify under penalty of law that the information contained in the report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that

the information is true, accurate, and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

23. SEP Implementation Report. Georgie Boy shall submit a report summarizing the operation and maintenance activities for the MIG welder for the calendar year 1999, by March 28, 2000, for the calendar year 2000, by February 28, 2001 and for the calendar year 2001 by February 28, 2002. The reports shall include but not be limited to: a detailed description of the SEP implementation, a comparison of usage of welding sticks in lbs. versus the material usage under the new process, a comparison of the estimated emissions of stick welding versus MIG welding over the calendar year, an estimate of decrease in electrical power usage and any savings or other environmental benefit received by the change in processes. Additionally, the report shall contain itemized costs documented by copies of purchase orders and receipts, or canceled checks, and a certification that the SEP is being implemented consistent with the provisions of this Consent Decree.

24. Stipulated Penalties. In the event that the Defendant fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP described in Paragraph 19 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 19, above, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

(i) For each day Defendant fails to operate or maintain the SEP described in Paragraph 19 and the Scope of Work (Attachment A to this Consent Decree) at the Edwardsburg Facility, Defendant shall pay a stipulated penalty to the United States in the amount of \$1,000 (One Thousand Dollars).

(ii) If the SEP is satisfactorily completed, but the Defendant spent less than 90 percent of the amount of money specified in Paragraph 19 above, Defendant shall pay a stipulated penalty in an amount equal to \$54,655.42 (FIFTY FOUR THOUSAND SIX HUNDRED FIFTY FIVE DOLLARS AND FORTY TWO CENTS) minus the amount actually spent on the SEP.

(iii) If the SEP is satisfactorily implemented, and the Defendant spent at least 90 percent of the amount of money required to be spent for the project, Defendant shall not be liable for any stipulated penalty.

(iv) For failure to submit the SEP Implementation Report required by Paragraph 23 above, Defendant shall pay a stipulated penalty in the amount of \$1,000 (ONE THOUSAND DOLLARS) for each day after the due date for the report, until the SEP Implementation Report is submitted.

(v) For failure to submit any Periodic Report required by Paragraph 22, above, Defendant shall pay a stipulated penalty in the amount of \$1,000 (ONE THOUSAND DOLLARS) for each day after the report is originally due until the Report is submitted.

25. Stipulated penalties for subparagraphs (iv) and (v) above shall begin to accrue on the day after performance is due and shall continue to accrue through the completion date.

26. Defendant shall pay stipulated penalties within fifteen (15) days of receipt of written demand by the United States for such penalties. However, penalties shall accrue as provided in the preceding Paragraphs regardless of whether the United States has notified Defendant of a violation. Method of payment shall be in accordance with the provisions of Paragraph 16, above. Interest and late charges shall be paid as stated in Paragraph 17.

27. Nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendant's violation of this Consent decree or of the statutes and regulations upon which this Consent Decree is based.

28. If Georgie Boy fails to comply with the provisions of Paragraph 19 or the reporting obligations set forth in Paragraphs 22 and 23, Plaintiff may seek appropriate relief, including but not limited to injunctive relief from this Court to require compliance with the terms of this Decree.

29. Stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States by reason of Georgie Boy's failure to comply with the requirements of this Consent Decree or the Clean Air Act.

30. EPA's acceptance of the SEP specified in this Decree shall not be construed as EPA's approval of the engineering suitability of the equipment or technology installed by Georgie Boy.

31. In any formal written statement to the general public at large regarding the Edwardsburg facility or this Consent Decree during the life of this Consent Decree by Georgie Boy, making specific reference to the acronym "SEP," or the phrase "Supplemental Environmental Project," Georgie Boy shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act.

VII. RIGHT OF ENTRY

32. Georgie Boy agrees that EPA and its representatives, contractors and consultants,

shall have the authority to inspect the Edwardsburg Facility at all reasonable times, upon proper presentation of credentials, for the purpose of monitoring compliance with this Consent Decree, and for the purpose of confirming that the SEP is operating properly and in conformity with the representations made herein and in any report submitted by Georgie Boy.

VIII. PAYMENT OF STIPULATED PENALTIES

33. Any stipulated penalties incurred by Georgie Boy shall be paid by certified check made payable to the "Treasurer of the United States," within fifteen (15) days of receipt of written demand by EPA, Region V, for such penalties and are to be tendered to the United States Attorney for the Western District of Michigan at the following address:

United States Attorney
P.O.Box 208
Grand Rapids, Michigan 49501-0208

The case name, file number shall be clearly noted on the check. Notice of payment of stipulated penalties shall be made to the EPA and U.S. DOJ and shall be in accordance with the procedures set forth in Paragraph 16, above. Georgie Boy shall pay interest and late charges as set forth in Paragraph 17, above, for any delinquent payments of stipulated penalties. Georgie Boy may contest the basis for imposition of stipulated penalties demanded by EPA in writing, by first requesting an informal meeting with the Chief, Air Enforcement and Compliance Assurance Branch of U.S. EPA, Region V. After such meeting, Georgie Boy may petition to the Court for a hearing to resolve the dispute. In any such proceeding Georgie Boy shall have the burden of rebutting the allegation made by EPA that the Consent Decree has been violated.

IX. FORCE MAJEURE

34. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by the Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree. Inability to pay shall not constitute Force Majeure. If any event causes or may cause a delay in Defendant's compliance with any provision of this Consent Decree, Defendant shall notify the United States in writing as soon as practicable, but in any event within 10 days of when Defendant first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Defendant shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the Defendant to prevent or minimize the delay, and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid and minimize such delays.

35. Failure by defendant to comply with the above notice requirements shall render this Section voidable by the United States as to the specific event for which Defendant failed to comply with such notice requirements, and, if voided, of no effect as to the particular event involved.

36. The United States shall notify Defendant of its agreement or disagreement with Defendant's claim of unavoidable delay or impediment to performance within 30 days of receipt of the notice provided under this Section. If the United States agrees that the violation has been or will be caused by circumstances beyond the control of Defendant or any entity controlled by defendant, including its contractors, and that Defendant could not have foreseen and prevented

such delay by the exercise of due diligence, the parties shall stipulate to an extension of the compliance requirement(s) affected by the delay by a period not exceeding the delay actually caused by such circumstances. Defendant shall not be liable for stipulated penalties for the period of any such delay.

37. If the United States does not agree with Defendant's claim of a delay or impediment to performance, either party may submit the matter to the Court for resolution pursuant to the dispute resolution procedures established in this Decree. If the court determines that the violation has been or will be caused by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, Defendant shall also bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

38. Unanticipated or increased costs or expenses associated with the performance of Defendant's obligations under this Consent Decree shall not constitute circumstances beyond Defendant's control, or serve as a basis for an extension of time under this Section. Temporary shutdowns for routine maintenance do not constitute circumstances beyond Defendant's control for purposes of this Section.

X. PUBLIC ACCESS TO INFORMATION

39. All information and documents submitted by Defendant to the United States pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported by Defendant as confidential business information in accordance with 40 C.F.R. Part

40. If no claim of confidentiality accompanies documents or information when they are submitted to the United States, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

XI. GENERAL

41. Resolution; Non-Waiver. This Consent Decree shall resolve any and all civil claims for violations of the Clean Air Act relating to the Edwardsburg Facility that are alleged in the Complaint and occurring prior to the date of lodging of this Consent Decree. This Consent Decree does not settle, any matters other than those expressly specified herein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Georgie Boy with respect to all other matters. The United States expressly reserves, and this Consent Decree specifically does not settle any liability for criminal violations. Except as specifically provided in this Consent Decree, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under the Act, 42 U.S.C. § 7401 *et seq.*, or any other provision of law, against Georgie Boy or against any other person or entity not a party to this Consent Decree. Nothing in this Consent Decree shall be construed to be a permit. Georgie Boy shall be responsible for achieving and maintaining compliance with all federal, state, and local environmental laws, regulations, and permits applicable to the MIG welder.

42. Costs of Suit. Each party shall bear its own costs and attorney fees in this action.

43. Modification. There shall be no modification of this Consent Decree without written approval by both parties to this Consent Decree and the Court.

44. Authorizations. The undersigned representative of the Defendant certifies that he or she is fully authorized by the party whom he or she represents, to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to the Decree.

45. No Admission. Except as provided in Paragraph 4 Georgie Boy makes no admission of any fact or law or that the law has been violated by entering into this Consent Decree.

XII. NOTICES AND SUBMISSIONS

46. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Georgie Boy, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Re: DJ# 90-5-2-1-1954

As to EPA:

Jose C. de Leon
Assistant Regional Counsel (C-14J)
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to Defendant:

Harvey M. Sheldon, P.C.
150 No. Wacker Drive
Suite 1500
Chicago, IL 60606

XIII. PUBLIC COMMENT

47. The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

48. Georgie Boy shall not withdraw its consent to this Decree, and hereby consents to entry of this Consent Decree without any modifications.

XIV. RETENTION OF JURISDICTION

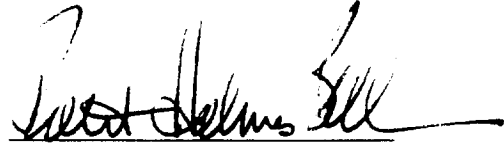
49. This Consent Decree shall be terminated upon motion by either party after two years of operation from the date of entry of the Consent Decree provided that Defendant has satisfied all requirements of the Consent Decree including payment of all penalties (including stipulated penalties) and provided that Defendant certifies that it is in compliance with the Act. The United states may oppose a motion by defendant and any such opposition shall be resolved by the Court. Until such termination, this Court retains jurisdiction of this matter for the purpose of enforcing the terms of this Consent decree.

50. Georgie Boy shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree, except those covered under Paragraph

46, above.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

SO ORDERED THIS 23 DAY OF November, 1999


United States District Judge

Certified as a True Copy
Rogelio C. Wagoner, Jr., Clerk
By Sheila Rios
Deputy Clerk
U.S. District Court
Western District of Washington
Date 11/24/99

United States of America v. Georgie Boy Manufacturing , Inc.
File No.

FOR Georgie Boy MANUFACTURING, INC.:

Dated: June 18, 1999

Name: 

Title: Secretary


Agent Authorized to Accept Service of Process:

Georgie Boy Manufacturing, Inc.
c/o Richard Lavers, Esq.
General Counsel
Coachmen Industries, Inc.
2831 Dexter Drive
Elkhart, IN 46514


United States of America v. Georgie Boy Manufacturing, Inc.
File No.

FOR THE UNITED STATES OF AMERICA,
Plaintiff

Dated: 9/29/99

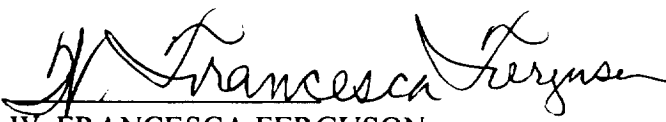

JOEL M. GROSS
Chief, Environmental Enforcement
Section
Environment and Natural Resources
Division
United States Department of Justice

Dated: 10/1/99


MARY REED, Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-2580

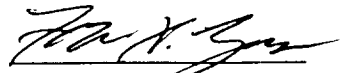
MICHAEL H. DETTMER
United States Attorney
Western District of Michigan

Dated: 10/4/99


W. FRANCESCA FERGUSON
Assistant U.S. Attorney
P.O. Box 208
Grand Rapids, Michigan 49501-0208
(616) 456-2404

United States of America v. Georgie Boy Manufacturing, Inc.
File No.1:96-CV-58

Dated: 4/28/97



Francis X. Lyons
Regional Administrator
United States Environmental
Protection Agency
Region V
77 West Jackson Blvd.(R-19J)
Chicago, Illinois 60604

Dated: 8/19/97



Jose C. de Leon
Assistant Regional Counsel
United States Environmental
Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604